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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/037,287 | 12/20/2001 | Denise R. Couture | 17,703 | 6818 |
| 23556 | 7590 | 08/25/2005 | EXAMINER | |
| KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956 | | | REICHLE, KARIN M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3761 | |

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Tkm

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|------------------------------|--------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 10/037,287 | Applicant(s) COUTURE ET AL. | |
| | Examiner Karin M. Reichle | Art Unit 3761 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-12 and 14-47 is/are pending in the application.
- 4a) Of the above claim(s) 1-3,5-12,14-20,32-34,36-38,40 and 43-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-31,35,39,41 and 42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>3/04 & 5/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following Office action is based on the abstract filed 2-18-04, the election filed 7-26-04, the replacement drawings, microphotos and annotated drawings filed 2-25-05, the specification amendments, and claim amendments filed 6-10-05 and the remarks of 2-18-04, 11-15-04, 2-25-05 and 6-10-05.

Election/Restrictions

2. Claims 1-3, 5-12, 14-20, 32-34, 36-38, 40 and 43-47 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 7-26-04. Claims 32-34, 36-38, 40 and 43-47 were also withdrawn because they do not read on the Figure of the elected species of Figure 1D.

3. Applicant's election with traverse of Group II invention and the species of Figure 1D in the reply filed on 7-26-04 is acknowledged. The traversal is on the ground(s) that there is no burden to search all the inventions and species because the subcombination independent claims do not require particulars other than those claimed in the combination claims. This is not found persuasive because each of the subcombination claims also requires the particulars of the article being a sanitary napkin which each of the independent combination claims do not require. It is noted that "sanitary napkin" as defined by the dictionary is "a disposable pad of absorbent

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material worn to absorb menstrual flow". These particulars as well as those mentioned in the election would necessitate diverging fields of search.

The requirement is still deemed proper and is therefore made FINAL.

Drawings

4. The drawings were received on 2-25-05. These drawings are approved by the Examiner except for the microphotographs as discussed infra. Also note the remaining informalities in the Figures. As set forth in MPEP 608.02, photographs are not ordinarily permitted in utility patents. The PTO will accept such if they are the only practicable medium for illustrating the claimed invention. There is no comment on behalf of the Applicant as to why photomicrographs are the only practicable medium in the instant case. Therefore, the approval of such photographs is withheld until such a time as Applicant provides a basis for such acceptance rather than the usual drawing.

5. The drawings are objected to because in Figure 1A the lines from the lower 70 should extend to the structure they denote. Also the lines from the lowermost 70 and the uppermost 72 in Figure 1D' should be dashed to denote underlying structure. Where is 30, 32, 34, and 42 in Figures 2A-2B as still described on pages 11-17? Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and

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where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention of claims 25-29, e.g., the layers, the absorbent body, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

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be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Description

7. The abstract of the disclosure is objected to because the abstract is still too long, i.e. more than 150 words in length, and now also the last sentence is also incomplete. Correction is required. See MPEP § 608.01(b).

8. The disclosure is objected to because of the following informalities: In the paragraph on page 9, line 25, line 3, “the wing” should be --one wing--. On line 4, after “invention”, --(FIG. 1B)-- should be inserted. Appropriate correction is required.

Claim Objections

9. Applicant is advised that should claim 21 be found allowable, claim 30 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 112

10. Claims 21-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 21, the preamble of this claim which claims the subcombination of a fastening system for a napkin and the body of the claim which claims a combination of the fastening system and the napkin is inconsistent.

Claim Rejections - 35 USC § 102

11. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

12. Claims 21-31, 35, 39 and 41-42 are rejected under 35 U.S.C. 102(e) as being anticipated by Hammons et al '484.

In regard to claims 21-28, 30-31, 35, 39 and 41-42, see Figures 1-12, i.e. the topsheet is 22, the backsheet is 26, the core is 24, the first and second, portions, flaps, flap portions or wings are 34, 36, see also paragraphs 84-87 of Hammons et al, the fastener components are 102, 104, see also paragraphs 88-99, 107-108 and 121-124. The cited sections also incorporate Scripps '724 at col. 12, lines 36-42, and thereby Noel et al '520 at, e.g., Figures, col. 6, lines 48-51, col. 8, lines 3-9 and col. 12, lines 15-35. Noel teaches that a loop fastener component can be a nonwoven pattern unbonded loop material with direction dependent or nonisotropic openings. Such openings are taught as all facing the same direction and that such direction can be parallel to, perpendicular to or at any direction or angle to the direction of attachment. The cited Hammons sections also incorporate Thomas, EP '087, which at col. 14, lines 8-20 teaches a hook fastener component has engagement members with direction dependent or nonisotropic openings which can all face in the same direction. In Figure 6 and at col. 34, lines 13-15 it is further

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taught that such openings all face in the same direction as the long axis of the fastener. The cited Hammons sections also incorporate Nestegard '060 which at col. 7, lines 24-27 teaches a hook fastener component having engagement members with direction dependent or nonisotropic openings which all face in the same direction which direction is parallel to the long axis of the fastener and at col. 9, lines 23-41 teaches a pattern unbonded nonwoven loop cooperating fastener component. Therefore, Hammons teaches fasteners 102 and 104 on each flap, wing or portion. The fasteners on each wing can either be both hook fasteners or both loop fasteners or one hook and one loop fastener. The fasteners 102, 104 can be parallel with each other, disposed orthogonally to each other or at any angle with regard to each other. Thus the fasteners are also so oriented with regard to the direction of attachment. The hooks on the first fastener can be direction dependent or nonisotropic with the engagement member openings all facing the same direction. Additionally the openings could be aligned with the long axis of the fastener. The loops on the cooperating fastener can also be direction dependent or nonisotropic with the loop openings all facing in the same direction. The direction can be any direction with respect to the direction of attachment. Accordingly the Hammons et al device includes first fastener components having nonisotropic engagement members with the engagement openings perpendicular to the direction of attachment, see, for example, Figures 7 and 9, and a cooperating fastener component having nonisotropic loop members with the loop openings parallel or perpendicular to the attachment direction and engagement openings of the first fastener. With regard to lines 6-7 and last three lines of claim 21, the corresponding language of claims 30 and 39 and claims 22-24, see, e.g., page 8, lines 18-26 and Figures of the instant specification. The Hammons device includes the same structure and orientation thereof. Therefore, if not already

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taught by the Hammons, there is sufficient factual basis for one to conclude that the functions, capabilities or properties of the claimed structure are also inherent in the same structure of the Hammons device. See MPEP 2112.01.

In regard to claim 29, see Figures 25-28 and paragraph 142.

Response to Arguments

13. Applicant's remarks have been considered with regard to the informalities and double patenting but are either deemed moot in that the issue discussed has not been repeated or deemed not persuasive for the reasons set forth supra. The double patenting rejection is withdrawn since the claims of the '278 application are all drawn to an embodiment which reads on one of the nonelected species in this application. The statement of common ownership with regard to the '278 application has been noted. Applicant's remarks with regard to the remaining prior art rejection based on Hammons has been noted but are deemed not persuasive because such are narrower than the claim language and/or the prior art teachings. For example, Applicant argues that because the Hammons reference, and thereby the references/teachings it incorporates, teaches more than one embodiment of fastening system, such does not necessarily possess the characteristics of the claimed invention. However, since Hammons is being applied under 35 USC 102, the disclosure of more than one embodiment is irrelevant. It is noted that the sentence bridging pages 20-21 of the 2-28-04 remarks is unclear.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any new grounds of rejection were necessitated by the amendments to the claims.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
August 18, 2005